



Federal Communications Commission
Washington, D.C. 20554

April 6, 2009

DA 09-774

Christopher Kaczmarek
4980 Coralberry Rd.
Saginaw, Michigan 48604-9521

Re: Petition and request for declaratory ruling

Dear Mr.Kaczmarek:

This is in response to your October 6, 2007 petition and request for declaratory ruling regarding your ability to install a radio antenna structure for use with Amateur Radio Station KB8MLC. Specifically, you state that you received notice from the manager of the Robin Glen Mobile Home Community that antennas were not allowed in the community, and that yours had to be removed. You request a ruling from the Commission recognizing your right to install an amateur radio antenna structure. For the reasons set forth below, we deny your petition and request for declaratory ruling.

As you correctly point out, Section 97.15 of the Commission's Rules provides that state and local regulation of antenna structures must not preclude amateur service communications, must reasonably accommodate such communications, and must constitute the minimum practicable regulation to achieve the state or local authority's legitimate purpose.¹ The Commission has not, however, extended this policy to regulations promulgated by private parties. The Commission considered the question in 1985² and again in 2001,³ and chose not to preempt private land use regulations that restrict the installation of antennas and associated support structures used by amateur radio stations. As agreements between private parties are voluntarily established and freely entered into, the Commission is hesitant to interfere with them unless it is shown that private agreements will seriously disrupt the federal regulatory scheme.

Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 5(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(d), and Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, the request for declaratory ruling filed by Christopher Kaczmarek on October 6, 2007 IS DENIED.

¹ See 47 C.F.R. § 97.15(b).

² See Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, *Memorandum Opinion and Order*, PRB-1, 101 F.C.C. 2d 952 (1985).

³ See Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antenna and Support Structures, and Amendment of Section 97.15 of the Commission's Rules Governing the Amateur Radio Service, *Memorandum Opinion and Order*, 17 FCC Rcd 333 (2001), *recon. dismissed*, 17 FCC Rcd 19408 (WTB PSPWD 2002); see also Don Schellhardt, *Letter*, 22 FCC Rcd 4025, *aff'd*, 22 FCC Rcd 13511 (WTB MD 2007).

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau